

From: zyxar zyxar
To: Microsoft ATR
Date: 1/27/02 7:40pm
Subject: Microsoft Settlement

[Text body exceeds maximum size of message body (8192 bytes). It has been converted to attachment.]

To Whom It Concerns:

As a participant in the development, test, and support of computing systems, including hardware and software, since 1984 I have a vested interest in the remedies that might be imposed on what has now become a long pattern of anti-competitive behavior from Microsoft. My observations of Microsoft began in 1993 when I was an IBM employee working in the AS/400 software competitive analysis group. As part of my training I sat through an hour-long session in 1994 with one of IBM's corporate attorneys who went over guidelines and rules of conduct that IBM employees should adhere to when dealing with customers, suppliers, Value Added Resellers, and competitors. Near the end of this presentation I asked the attorney how IBM was supposed to compete with Microsoft when Microsoft regularly practiced much of what she had identified as inappropriate behavior? She mumbled something about IBM taking a more conservative approach to law than many other companies but never did answer the question. That was eight years ago.

There are two areas addressed by the Revised Proposed Final Judgment that I think are important to consider: the Original Equipment Manufacturer (OEM) market for the distribution of personal computing (PC) hardware and the Independent Software Vendor (ISV) market. I think the proposed remedy goes a long way toward adequately addressing the OEM market for the distribution of PC hardware although my experience and expertise in this area is somewhat limited. Through Microsoft's contractual manipulations the OEM market became a highly effective and exclusive distribution channel for Microsoft operating systems, applications and middleware technology and clearly this needs to be remedied. I do not believe the proposed remedy adequately addresses the unfair advantages Microsoft has in the development of application software through control of the Application Programming Interfaces (API) of their operating system and middleware products.

I believe we can establish fairness in the software market for Windows applications only by forcing a separation between Microsoft's operating system (OS) group and their applications group. Their OS group should in effect be separated as an independent company from their applications group. The flow of information from the OS group to any application organization be it Microsoft or a third party development organization should be only through publicly published documentation. Certainly any application development group should be able to voice its opinions, plans, and concerns directly to Microsoft but any technical discussions regarding the proposed plans, release dates, APIs, or other pertinent data related to operating system plans should only be available to all vendors at the same time through public documentation.

Contrary to what many Microsoft employees believe, this will not lead to the downfall of Microsoft and the collapse of the US technology economy. Microsoft is a strong company with an unparalleled pool of technical skills and will continue to thrive even if they are made to compete fairly.

MTC-00027112_0002

I offer my reasons for this belief in the supporting arguments that follow.

In the early years of the PC industry Microsoft and other vendors who were supplying operating system software were focused on operating system revenue. There was no application market because there were few applications. Many small innovative companies recognized the possibilities afforded by cheap personal computing hardware and things we take for granted today like spread sheets and word processors were invented, developed and successfully marketed by companies other than Microsoft. Almost all of the innovative companies who invented and successfully commercialized applications 10 years ago have market shares subordinate to Microsoft in the very application categories they developed. Additionally the fact that these companies chose to develop applications for Windows helped create the popularity and standardization on Windows that would lead to Microsoft's monopoly position.

Eventually the market for applications became greater than the operating system market. Unfortunately when Microsoft moved into the application market they began to tilt the deck in their favor by building stuff into their operating systems that would benefit their applications without making all of this information available to third party development organizations. (I knew IBM developers who voiced their opinion that Microsoft was not being very timely in the dissemination of information that they needed to finish their development work.) Microsoft could write applications that utilized OS functions and APIs that other vendors might not even know existed until Microsoft's application products were released and in the market.

As an example of one such advantage it has been known in the past that Microsoft has utilized what are termed ?undocumented functions? in their operating systems. An undocumented function puts a third party application developer in a tough situation if he or she has knowledge of such a function. Does a developer use the undocumented function, which clearly allows the development of a better application, and risk having to rewrite that application later if Microsoft removes the function in a new release? Or does the developer forego use of the undocumented function compromising the application in exchange for avoiding a potentially messy application rewrite or a bunch of unhappy customers?

In this kind of environment Microsoft will always have an advantage for planning future application products.

Knowing that the OS group is going to provide function X or API set Y or new technology Z in the future they can begin implementing application C based on this knowledge well in advance of the actual implementation or release of that function in effect giving them a head start for their application development teams over the rest of the industry. And at their whim they can drop support of these technologies later on if it suits them effectively stranding an ISV in a technical ?no mans land? forcing them to re-architect their application because a

function they expected to use is no longer being offered by Microsoft.

In it's defense against allegations from Netscape, Microsoft has argued that Internet Explorer is an integrated part of the operating system. No one with even a rudimentary understanding of computer science believes that a browser is an OS service function. However, the fact that Microsoft would argue this makes my arguments above even more salient. Microsoft thinks they are justified in arbitrarily subsuming an application by claiming it is part of the operating system. So some vendor like Netscape (or Stac Electronics, or Norton Utilities) gets a great idea, puts a lot of capital at risk to develop and market that idea and then sees a competing product distributed through the exclusive windows operating system distribution channel and given away for free.

Microsoft chose to choke off Netscape not because they wanted to make money

In the browser market but because they feared that browsers could become a new market for software sold on personal computers. And if another company could control the standards, APIs and middleware for which PC software was written it would seriously jeopardize Microsoft's control of software development and that control translates into revenue and profitability. Better to lose a little money now than risk losing control of the whole software franchise. With the shadow of this specter hanging over the market for PC applications how is our capitalist free enterprise system supposed to work? I would argue that for quite a while now Microsoft shareholders have reaped the rewards for the innovation of and risks taken by companies other than Microsoft.

In my work I extensively use Internet Explorer (IE) and Netscape Navigator (NN) to test my applications. Although the difference between the two products is very small and certainly not enough to justify the almost complete dominance that IE enjoys over NS despite the early dominance NS had over IE, I believe IE is a better browser than NS. Could IE have an advantage by virtue of the fact that it is so tightly integrated into Microsoft's OS code? Can Netscape ever build a browser that loads as quickly or performs as well as IE without the benefit of being as tightly integrated into the OS? I don't think so. And even more important than the fact that IE has an advantage by being more tightly integrated into Windows is the fact that it is pre-installed on every Windows PC. Having any middleware preloaded on every Windows PC shipped confers a huge advantage in follow on revenue associated with the standards that can be established and the code that will then be implemented around those standards. If Microsoft controls those standards they can effectively manipulate the technology and APIs to their advantage.

In 1984 I as an engineer for IBM had to help publish a set of specifications relative to the external behavior of the Diskette Storage subsystem I helped develop so any third party vendor could learn enough about the IBM equipment to service it and effectively compete with IBM for lucrative service revenue. It seems that someone believed it was important to

provide a more level playing ground in the market for hardware service. Today some 16 years later the market has moved from hardware, which in most cases is a commodity, to software. But the same rules that did and still do apply to IBM hardware should also apply to Microsoft operating system software.

Sincerely,

William A. Shaver
Netelligent Consulting, Inc.
Somerville, MA 02144

Do You Yahoo!?
Great stuff seeking new owners in Yahoo! Auctions!
<http://auctions.yahoo.com>